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November 9, 2012

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Dennis J. McLerran  
Regional Administrator  
Region 10, U.S. Environmental Protection Agency  
1200 Sixth Avenue, Suite 900  
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Seattle, WA 98101

**Re: Draft Administrative Order on Consent**

Dear Dennis:

On behalf of our dairy clients, we wanted to accept your October 12, 2012 invitation to contact you with any questions regarding the collaborative process envisioned for moving forward. We believe a collaboratively developed solution resulting in an enforceable agreement between EPA and our dairy clients that provides clean water, source controls, and monitoring is achievable. However, we are concerned that we will not be able to reach such a solution using the process and the framework EPA is currently pursuing. We seek your participation to strengthen the process and improve the chances of reaching a mutually-acceptable resolution.

There are three things that could be done immediately, and each would dramatically increase our ability to reach a positive and durable solution. First, EPA must be open to a form of an enforceable agreement other than the unilateral emergency order template that it appears to be seeking. The agency's draft proposal is simply unworkable. For example, it would have the dairies admit to facts and legal conclusions that, at least in our clients' minds, are not yet settled, but are certain to be used in litigation against them, and their inclusion is completely unnecessary for us to reach a binding agreement. Second, EPA should take the time to get this right. Our dairies can educate the agency about the source control and monitoring regimes we believe, based on long standing and personal experience, are most likely to work in the field. They can learn from your staff about the quality and quantity of data necessary. And we can both profit from comments on the EPA's draft report "Relation Between Nitrate in Water Wells and Potential Sources in the Lower Yakima Valley, Washington." EPA is currently insisting on a 60 day deadline for negotiating an agreement, which does not allow for any of those activities to happen. An additional 30 days would help.

Most urgently, EPA has strenuously resisted providing the names or addresses of those individuals who it believes need immediate access to clean and safe drinking water. Our clients have offered to immediately provide safe drinking water, but need to know who needs it. Instead, the agency has told us not to proceed until an enforcement order is complete. If the problem is as bad as EPA seems to believe, this delay to elevate process over public health is unconscionable.

Dennis J. McLerran  
November 9, 2012  
Page 2

We can and should move forward immediately together on a remedy. Immediate action would also allow us to be more deliberative on the source control and monitoring as we suggest above.

To be clear, our clients have an unequivocal desire to provide alternative water supply, apply source control measures, and conduct groundwater monitoring. Those actions must take place in the context of a reasonable bilateral agreement with EPA. Our collective success here will also help enable the return enforcement jurisdiction back to the state of Washington, as you have suggested as a desirable outcome.

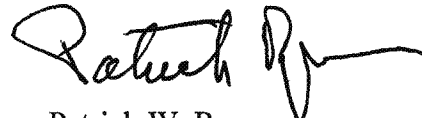
We appreciate your willingness to continue to be engaged with this process. We know it is important to you and to the agency, and you should know there is nothing more important to our clients. We would like you to attend the next meeting we have with EPA so we can improve our chances of reaching a successful conclusion to this process.

Very truly yours,

FOSTER PEPPER, PLLC

  
Lori Terry Gregory

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Patrick W. Ryan

cc: Edward Kowalski (EPA)  
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